

ADMINISTRATIVE PANEL DECISION

Subsea 7 Limited v. Mark Miller, ca domains
Case No. D2023-1067

1. The Parties

Complainant is Subsea 7 Limited, United Kingdom, represented by Keltie LLP, United Kingdom.

Respondent is Mark Miller, ca domains, Canada.

2. The Domain Name and Registrar

The disputed domain name is <subsea7-energy.com> which is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 9, 2023. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 10, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on March 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 6, 2023.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on April 14, 2023. This Panel finds that it was properly constituted. This Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant is engaged in the provision of goods and services for the energy industry.

Complainant has rights over the SUBSEA 7 mark for which it holds several mark registrations, such as United States of America Registration No. 4,642,875, registered on November 25, 2014; European Union Registration No. 011426335, registered on May 13, 2013; International Registration No. 1147789, registered on December 14, 2012; and United Kingdom Registration No. UK00002304950, registered on April 21, 2006, all of them in classes 7, 37, 39 and 42.

The disputed domain name was registered on March 5, 2023. At the time the Complaint was filed, the website linked to the disputed domain name merely showed "Index of /", "Name Last modified Size Description", "cgi-bin/ 2023-03-05 22:48".

5. Parties' Contentions

A. Complainant

Complainant's assertions may be summarized as follows.

Complainant has received considerable publicity by reference to its corporate name over the years, and has registered its SUBSEA 7 marks in many countries around the world. Complainant transacts an enormous volume of business by reference to its marks, including in Canada where Respondent appears to be based as per the corresponding Whols report.

The disputed domain name reflects Complainant's SUBSEA 7 mark in its entirety and, therefore, is identical. The additional word "energy" does not distinguish the disputed domain name from Complainant's mark as such term is descriptive in relation to the goods and services offered by Complainant.

Respondent has no rights or legitimate interests in respect of the disputed domain name. Respondent is not commonly known as Subsea7 or Subsea7-energy. Complainant has not given its consent for Respondent to use its registered mark in the disputed domain name, and Respondent does not own any registered rights in any marks which comprise part or all of the disputed domain name.

The disputed domain name directs to an inactive webpage, and there is no evidence that Respondent has made demonstrable preparations to use the disputed domain name for legitimate purposes, nor is there any evidence that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods and services. It is only a matter of time before the disputed domain name is used in connection with a commercial offering that would take unfair advantage of Complainant's rights for commercial gain. Complainant's reputation in its global portfolio of SUBSEA 7 marks is such that Internet users would inevitably view the disputed domain name and mistakenly associate its content with Complainant.

Respondent registered and uses the disputed domain name in bad faith. Complainant's mark is well known in the industry¹ and no other individual or business owns trademark rights (whether registered or unregistered) in the SUBSEA 7 mark. The term "subsea7" is not descriptive in any way, and the combination of words and numerals has no generic or dictionary meaning. Thus, it is highly likely that Respondent was aware of Complainant's rights prior to acquiring or registering the disputed domain name and it is inevitable that visitors to the disputed domain name would mistakenly believe that Respondent is associated with Complainant.

¹ Complainant relies on *Subsea 7 Limited v. Andrew Thomasson*, WIPO Case No. [D2018-1253](#): "Complainant's trademark is well known".

The disputed domain name directs to an inactive webpage and thus it is being held passively by Respondent. Passive holding of a domain name which cannot be used legitimately by anyone other than the mark holder is registration and use in bad faith. UDRP decisions have historically set forth that there can be a finding of registration and use in bad faith where there is passive use of a widely known mark in a domain name where there is no response and no explanation as to why the use could be good faith. In the absence of a response from Respondent, on the balance of probability, Respondent has registered and used the disputed domain name in bad faith.

The disputed domain name is being used as a blocking registration, preventing Complainant from using it. Respondent's continued ownership of the disputed domain name poses a threat. Respondent could use the disputed domain name commercially, or not least for diverting customers, resulting in inevitable damage to the reputation that Complainant enjoys in its SUBSEA 7 marks.

Respondent's use of the disputed domain name constitutes bad faith insofar as Respondent's interest cannot be legitimate. It seems Respondent registered the disputed domain name to make money from it. Respondent may intend to sell the disputed domain name to Complainant, a competitor or a critic or, alternatively, it may intend to confuse consumers as to an affiliation or connection with Complainant. In any event, Respondent registered and retains the disputed domain name which it cannot use lawfully. That in and of itself amounts to registration and use in bad faith.

Complainant requests that the disputed domain name be transferred to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

The lack of Response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tiniculescu*, WIPO Case No. [D2003-0465](#), and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is undisputed that Complainant has rights over the SUBSEA 7 mark.

Since the addition of the generic Top Level Domain ("gTLD") ".com" in a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. The disputed domain name reflects the SUBSEA 7 mark in its entirety, albeit followed by "-energy". It is clear to this Panel that the SUBSEA 7 mark is recognizable in the disputed domain name and that the addition of such term in the disputed domain name does not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)).

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that it has not authorized Respondent to use its SUBSEA 7 mark,² that Respondent is not commonly known by such mark or the disputed domain name, that Respondent does not own any registered marks which comprise part or all of the disputed domain name, that Respondent has not made any demonstrable preparations to use the disputed domain name for legitimate purposes, and that the disputed domain name falsely suggests affiliation with Complainant and its mark. The evidence in the file shows that the website linked to the disputed domain name may be deemed inactive. Nonetheless, the disputed domain name reflects Complainant's name and mark in its entirety (though followed by "-energy"), and thus it seems to this Panel that the composition of the disputed domain name carries a risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

This Panel considers that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name (see section 2.1 of the [WIPO Overview 3.0](#)). In the file, there is no evidence of circumstances of the type specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

Taking into consideration that the registration and use of the SUBSEA 7 mark preceded the creation of the disputed domain name, that said mark appears to be a distinctive combination of letters and numerals, and that it is uncontested that such mark is well known in its industry, this Panel is of the view that Respondent should have been aware of the existence of Complainant and its mark at the time it obtained the registration of the disputed domain name, which is indicative of bad faith.

The concept of a domain name "being used in bad faith" is not limited to a domain name with an active website on the Internet (see "*Dr. Martens*" *International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc.*, WIPO Case No. [D2017-0246](#), and section 3.3 of the [WIPO Overview 3.0](#)). In the case at hand, in addition to the circumstances mentioned above, Respondent's bad faith may be deduced from the following facts: (i) Respondent is using, without Complainant's authorization, Complainant's name and mark at the disputed domain name (albeit coupled with "-energy" which, in the case at hand, may be indicative of Complainant's energy sector related-activities); (ii) the lack of any basis in the file to conceive a legitimate use of the disputed domain name by Respondent;³ (iii) the risk of implied affiliation of the disputed domain name with Complainant's name and mark; and (iv) Respondent's failure to appear in this proceeding, which may be deemed as a showing that Respondent lacks arguments and evidence to support its holding of the disputed domain name.

² See *Casio Keisanki Kabushiki Kaisha (Casio Computer Co., Ltd.) v. Jongchan Kim*, WIPO Case No. [D2003-0400](#): "There is no evidence that the Complainant authorized the Respondent to register the disputed domain name or to use the CASIO trademark, with or without immaterial additions or variants. These circumstances are sufficient to constitute a *prima facie* showing by the Complainant of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent".

³ See *Ferrari S.p.A. v. Ms. Lee Joohee (or Joo-Hee)*, WIPO Case No. [D2003-0882](#): "Respondent has provided no evidence or suggestion of a possible legitimate use of the Domain Name. Thus, in the words of Telstra, it is not possible to conceive of any plausible actual or contemplated active use of the Domain Name by the Respondent that would not be illegitimate".

In sum, the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its substantial similarity with, and with the likely intention to benefit from, Complainant's name and mark, which denotes bad faith.⁴

In light of the above, this Panel finds that Complainant has satisfied paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, this Panel orders that the disputed domain name <subsea7-energy.com> be transferred to Complainant.

/Gerardo Saavedra/

Gerardo Saavedra

Sole Panelist

Date: April 28, 2023

⁴ See *Jafra Cosmetics, S.A. de C.V. and Jafra Cosmetics Internacional, S.A. de C.V. v. Active Vector*, WIPO Case No. [D2005-0250](#): "due to the intrinsically distinctive character of Complainants' trademarks, it is inconceivable that the contested domain name would have been registered and used if it were not for exploiting the fame and goodwill of Complainants' marks by diverting Internet traffic intended for Complainant".